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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)

Amendment of the Commission's)
Rules Regarding Installment Payment)
Financing For Personal Communications)
Services (PCS) Licensees)

WT Docket No. 97-82

To: The Commission

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COMMENTS OF NEXTEL COMMUNICATIONS, INC.

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SUMMARY

Nextel Communications, Inc. ("Nextel") respectfully submits these Comments on the Notice Of Proposed Rule Making ("NPRM") concerning the re-auction of returned C Block Personal Communications Services ("PCS") licenses. Nextel asserts that the re-auction should be open to all qualified bidders. Setting aside C Block licenses solely for "small businesses" is not required by the Communications Act of 1934 and would not be in the public interest in light of today's competitive telecommunications marketplace. The Commission can fulfill its statutory obligation to assure small business participation in the PCS licensing process and to promote rapid development of the re-auctioned C Block spectrum by providing small business bidding credits, and by allowing small business post-auction partitioning and disaggregation.

To facilitate rapid deployment of wireless services on the re-auctioned C Block licenses, the Commission should ensure that all capable and interested parties are entitled to participate in the re-auction. Only by permitting unrestricted participation can the Commission ensure that the spectrum is placed into the hands of those who value it most highly and are in a position to rapidly fund, construct and implement wireless telecommunications systems in today's marketplace. Rapid development of the C Block spectrum promotes the public interest by ensuring that spectrum is put to its highest and best use, and by enhancing the competitive position of existing C Block licensees that are relying on the buildout of

these systems to facilitate nationwide roaming and network integration.

Today's competitive wireless telecommunications marketplace is significantly different from the one that existed in 1994 when the Commission first established the C Block set-aside auction. Winners of the re-auctioned C Block licenses will likely be the sixth or seventh wireless entrant in a market, they will be seeking investment from a financial community already approached by numerous other competitors, and they will be facing fierce competition from well-financed, entrenched telecommunications companies. These factors ensure that the "bar" has been raised even higher for re-auctioned license winners than it was for the original C Block winners, some of whom have declared bankruptcy.

Small business should participate in the re-auction, and they should be placed on a level competitive playing field with large businesses through the use of bidding credits. Should a small business value a particular C Block license most highly, bidding credits will enhance its ability to bid competitively with a large, entrenched telecommunications company that likewise places a high value on that spectrum. Additionally, small business participation in the C Block spectrum assignments can be significantly enhanced through the use of spectrum disaggregation and partitioning.

For these reasons, Nextel respectfully submits herein that the Commission should open the C Block re-auction to all interested qualified parties.

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To: The Commission

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

I. INTRODUCTION

Pursuant to Section 1.415 of the Rules of the Federal Communications Commission ("Commission"), Nextel Communications, Inc. ("Nextel") respectfully submits these Comments on the Further Notice of Proposed Rule Making ("Notice") in the above-referenced docket.^{1/}

In the Notice, the Commission seeks industry comment on the re-auction of certain C-Block Personal Communications Services ("PCS") licenses that may be returned to the Commission on or before January 15, 1998. The Commission requested comment on eligibility requirements for the C-Block re-auction as well as the specific auction procedures that should be employed therein.^{2/} Nextel respectfully submits that the Commission should open the C-Block re-auction to all qualified bidders rather than restricting

^{1/} Second Report and Order and Further Notice of Proposed Rule Making, FCC 97-342, released October 16, 1997.

^{2/} Notice at para. 7.

it to "entrepreneurs,"^{3/} and should fulfill its Congressional obligations by awarding bidding credits to small business participants. The Commission is under no statutory obligation to set aside the C Block PCS licenses for entrepreneurs, and in today's competitive environment, the public interest would be better served by allowing broad participation in the C Block re-auction.

II. BACKGROUND

In the Fifth Report and Order in PP Docket No. 93-253,^{4/} the Commission concluded that C Block broadband PCS licenses should be set aside for "entrepreneurs" to insulate small businesses from the competition of large "telephone, cellular and cable television companies" in the auction process.^{5/} Although the Commission recognized that setting aside spectrum for small businesses was not required by Section 309(j)(3) of the Communications Act,^{6/} it concluded that setting aside spectrum specifically for small businesses would facilitate their access to the amount of capital that would be necessary to build out broadband PCS systems.^{7/}

^{3/} The Commission defines "entrepreneurs" for the C Block as those companies with "gross revenues of less than \$125 million in each of the last two years and total assets of less than \$500 million. . ." Section 24.709(a) of the Commission's Rules.

^{4/} Fifth Report and Order, 9 FCC Rcd 4493 (1994) ("5th R&O").

^{5/} *Id.* at para. 121.

^{6/} According to the Commission, the "law does not mandate the use of any particular procedure. . ." *Id.* at para. 93.

^{7/} *Id.* at para. 96-103.

As a result, a number of small businesses participated in the C Block auction and acquired licenses in various markets throughout the country. Some of these licensees, in fact, have already constructed and launched commercial operations.^{8/} A handful of bidders, on the other hand, chose to manipulate the small business set aside in an attempt to horde spectrum and build out nationwide systems at what they had believed would be discounted prices as compared to the A and B Block PCS licenses. Among the backers for these "small business" applicants were the large, multi-national conglomerates Sony, Korea Electric Power Company, and Pohang Steel.^{9/}

These competing "small business" applicants bid well in excess of the A and B Block prices for geographically-smaller licenses. The result was that these overbidding licensees found themselves in debt far beyond their Commission-limited means (to qualify as small businesses) and unable to fulfill their debt obligations, much less to rapidly deploy C Block PCS services.^{10/} The set aside

^{8/} Cook Inlet Region, Inc. told the Commission in May of this year that it would be launching C Block systems by mid-1997. Western Wireless Corporation, moreover, has launched commercial operations in all seven of its C Block PCS MTAs. See Comments of Western Wireless Corp. et al., WT Docket No. 97-82, filed June 23, 1997.

^{9/} See, e.g., Partial Response of Antigone Communications Limited Partnership and PCS Devco, Inc. to Nextwave's Section 308(b) Filing, submitted November 25, 1996, spelling out each of the foreign investors in Nextwave Communications, Inc.

^{10/} A "small business" is, by definition, a company with limited assets and average gross revenues. It obtains that status specifically because it is not expected to be able to bid billions of dollars in competition with industry giants.

auction, in other words, inadvertently created an "incentive for businesses to engage in shams and fronts" to achieve small business eligibility -- the very result the Commission had tried to avoid.^{11/}

Now having established a program for C Block licensees to turn in all or portions of their licenses and avoid default on their debt obligations, the Commission is seeking comment on the rules for re-auctioning those licenses. Lessons that should have been learned in the C Block set aside auction, however, appear to have been ignored because the Notice fails to solicit comment on whether a set aside of C Block licenses for "entrepreneurs" continues to be in the public interest.

Nextel submits that limiting eligibility in the re-auction to "small businesses" is not in the public interest because:

- (1) the public interest is best served by ensuring rapid deployment of C Block PCS services throughout the Nation, which is best assured by opening the auction to all potential applicants;
- (2) set asides skew marketplace realities and interfere with the proper functioning of the market, thus undercutting the effectiveness of competitive bidding to assign licenses to those that value them most highly; and
- (3) today's competitive wireless telecommunications marketplace is different from the one that existed when the Commission originally set aside the C Block licenses for small businesses, thus requiring a re-evaluation of the set aside mechanism.

^{11/} 5th R&O at para. 121.

Limiting eligibility in the C Block re-auction is not required by the Communications Act and is not in the public interest because it will encourage speculation and shams, and distract bidders from focused, small business-oriented courses of action, i.e., seeking to provide a niche service or concentrating on a limited geographic area where the company may have unique interests. It will forestall the rapid deployment of C Block systems by shutting out those entities most capable of expeditiously building out 30 MHz Basic Trading Area ("BTA")-based systems which would facilitate increased coverage and roaming for potential C Block competitors' networks. Moreover, insulating small businesses from big businesses in the auction does not protect them from the growing number of big business licensees already competing for wireless telecommunications consumers. The Commission cannot guarantee -- and should not attempt to guarantee -- small businesses success in the marketplace. Using a set-aside for C Block re-auctioning may exacerbate the number of C Block business failures in the increasingly competitive commercial wireless marketplace.

The Commission can provide small businesses opportunities through the use of bidding credits. This would provide small businesses sufficient opportunity for legitimate participation in the re-auction, would allow them to compete with larger entities that may choose to bid on these returned licenses, and would further the public interest by assigning the returned C Block licenses to those who value them most highly and can expeditiously put them to the highest and best use.

III. DISCUSSION

A. Existing C Block Licensees and their Customers Are Best Served By Rapid Buildout of Returned C Block Licensees

The legitimate small business licensees currently building out C Block systems are being significantly disadvantaged by the continuing delay in licensing the C Block spectrum. Because so many of the C Block licensees are small businesses, they have not established nationwide footprints; therefore, their competitive success relies on roaming agreements with other wireless carriers. As long as these returned C Block licenses lie fallow, existing C Block licensees are at a competitive disadvantage.

The Commission can promote a level competitive playing field for these incumbent licensees by facilitating rapid licensing, construction and buildout of the returned licenses. The more quickly these licenses are constructed and operational, the more quickly the existing C Block licensees can enter into roaming agreements and compete with other wireless providers not only in individual markets, but also in offering alternative competing wireless networks. In light of the growing maturity of the wireless marketplace, i.e., up to five wireless competitors in a single market, the speed of deployment is increasingly critical to re-auctioned C Block licensees' success in the marketplace. Therefore, the Commission should allow participation in the C Block re-auction by those companies with the greatest likelihood of building out C Block systems in the most efficient and effective manner, i.e., companies with extensive system implementation and operating experience, and capital. Small businesses, as discussed

below, can effectively participate with the assistance of bidding credits, partitioning and disaggregation.

B. A Set-Aside Auction Interferes With The Proper Functioning of the Marketplace

Setting aside the returned C Block licenses only for small businesses in the re-auction raises the potential for the Commission to fall into the same trap created by the original C Block auction, i.e., auction winners that cannot fulfill their debt obligations. Insulating small businesses from larger businesses in the bidding process changes the parameters within which bidders must make informed bidding decisions. Congress adopted competitive bidding to promote a license assignment process that would use marketplace forces to assign licenses to those parties that placed the highest value on the spectrum. By shutting out certain bidders, the Commission skews marketplace realities and undercuts the very reason Congress adopted the auction process.

Since the Commission first adopted the C Block set-aside in 1994, the wireless telecommunications industry has dramatically evolved. The wireless marketplace in 1994 consisted primarily of duopoly cellular providers offering nearly identical services to consumers. The wireless industry confronting the Commission and potential participants today, in contrast, consists of as many as five commercially operating wireless providers, offering consumers an array of services and varying digital and analog technologies. This is the marketplace the Commission and Congress envisioned in the early '90s with the passage and implementation of the 1993 Budget Act and the PCS spectrum allocation; it is not, however, a

marketplace in which insulated "entrepreneurs" can typically expect to successfully compete on a broad basis.

At this late date, the Commission cannot expect new entrant, novice entrepreneurs to enter the broad consumer marketplace expecting to compete effectively against the likes of AT&T Wireless, Sprint Spectrum, Bellsouth and Southwestern Bell and other wireless providers operating mature, established systems offering name-brand services. In this marketplace, only those companies -- large or small -- that have established themselves as providers in particular markets, or that are new entrepreneurial companies with a unique, affordable and technologically-advanced service (for which they can attract significant capital to build out their systems) can expect to put the re-auctioned spectrum to its highest and best use.^{12/} Therefore, the Commission should make these licenses available to all qualified bidders.

Small business entrepreneurs should be encouraged to participate in the wireless telecommunications marketplace, but in doing so, those companies -- just like large organizations -- must be prepared with business plans capable of surviving in a highly competitive, capital-intensive industry. Moreover, given the relatively late start these particular C Block licensees will have vis-a-vis other wireless providers, the competitive hurdles will be substantial. Insulating small businesses in an auction process, in

^{12/} Moreover, should a small business develop a business plan attractive enough to draw in significant investors, Commission-imposed size limitations should not restrain a company from acquiring that additional capital in order to provide C Block-based services to the public.

other words, will not insulate them from the competition they will face in the marketplace from well-financed, incumbent cellular, PCS and wide-area Specialized Mobile Radio carriers all competing for the same customers.

Therefore, given the drastic changes that have occurred in the marketplace since the Commission initially decided to set aside C Block licenses for small business, i.e., fierce competition among well-established, well-funded competitors as well as an increasing supply of spectrum for mobile communications purposes, set asides are not in the public interest. Consumers are entitled to C-Block spectrum assignments that will promote the rapid deployment of wireless telecommunications services in the most efficient and effective manner possible.

C. Bidding Credits, Partitioning and Disaggregation Provide "Entrepreneurs" Opportunities To Participate In the Broadband PCS Marketplace

Artificially shutting out the majority of bidders that can potentially put this returned C Block PCS spectrum to its most effective use, e.g., incumbent, well-financed wireless providers, is not in the public interest, and it is not required by the Communications Act. The Commission has at its disposal other means for ensuring small business opportunities to participate without establishing a quota on the number of licenses that should be assigned to "entrepreneurs."^{13/} Therefore, the Commission

^{13/} See 5th R&O wherein the Commission explicitly stated that its set-aside could "ensure that 'entrepreneurial' businesses are granted nearly one-half of all the broadband PCS licenses being auctioned." 5th R&O at para. 121.

should allow all qualified entities to participate in the C Block re-auction, and enable small businesses to bid competitively against large businesses by providing them bidding credits.

The provision of bidding credits for small businesses is in the public interest because they ensure participation by all interested bidders, thus allowing market forces to place the spectrum into the hands of those who value it most highly. At the same time, bidding credits fulfill Congress' objective that small businesses have an opportunity to participate in the PCS industry by placing them in a more competitive bidding position vis-a-vis big businesses. If a small business truly places the highest value on a particular returned C Block license,^{14/} bidding credits would provide it the leverage necessary to bid competitively with a big business that also may be interested in that license.

In addition to bidding credits, the Commission can ensure small business participation in broadband PCS services through partitioning and disaggregation. A C Block PCS license assigns a significant amount of spectrum (30 MHz) over a specific geographic area. As such, they are ideal for partitioning and disaggregation among multiple small businesses to make full use of the spectrum. Bidding credits combined with the ability to partition and/or disaggregate 30 MHz BTA licenses post-auction, therefore, would

^{14/} In the re-auction, existing C Block licensees may have a significant interest in obtaining those returned licenses adjacent to their existing footprints. Despite being small businesses, those C Block licensees, pursuant to rational, focused business plans, may place a higher value on that license than a large A or B Block PCS player. Bidding credits enable those C Block licensees to bid consistently with the high value they place on the license.

enable small businesses to establish bidding strategies that can compete with the bidding strategies of large entities. As a result, the winner of an auction open to all qualified applicants is more likely to be the company that truly places the highest value on a particular license and can put it into productive use.

As explained above, small businesses are not, by definition, companies with nationwide footprints offering a plethora of services. Rather, they are small businesses, with limited capital, and their success is more likely to result from focusing their efforts on niche product markets or smaller geographic coverage areas. As the C Block auction aptly demonstrated, insulating small businesses from the bids of big businesses encourages them to develop over-reaching business plans, e.g., seeking a near-nationwide footprint despite the crushing debt burden it requires, rather than a local or regional footprint. Overbidding, or seeking to obtain significantly more spectrum than small businesses are capable of implementing, is not in the public interest.

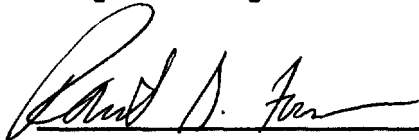
IV. CONCLUSION

The Commission should not proceed blindly with the C Block re-auction, ignoring the marketplace realities facing potential bidders today. The fact that set asides may have been reasonable in a duopoly cellular market does not mean the Commission should rubber stamp that decision on today's competitive marketplace. A set-aside auction would skew marketplace realities, encourage overzealous bidding on spectrum that will be very late to the

market, and shut out most of the bidders with the greatest likelihood of rapidly deploying C Block PCS services.

In lieu of set asides, the Commission can provide small business opportunities with bidding credits and the ability to partition and disaggregate post-auction. For these reasons, Nextel respectfully requests that the Commission eliminate the small business eligibility restrictions on the C Block re-auction.

Respectfully submitted,



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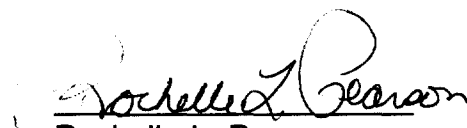
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CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 13th day of November, 1997, I caused a copy of the attached Reply Comments of Nextel Communications, Inc. to be served hand-delivery to the following:

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